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No. 97-1621

In The
Supreme Court Of The United States
October Term, 1997

ELINOR HALPERN
Pro Se Petitioner

v.

BRISTOL BOARD OF EDUCATION
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

BRIEF FOR THE BRISTOL BOARD OF EDUCATION IN OPPOSITION

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QUESTION PRESENTED

Whether the Connecticut Supreme Court correctly held, after having twice remanded this matter to the Bristol Board of Education for further proceedings, that petitioner's teacher termination satisfied the requirements of due process.

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Opinions Below

The opinion of the Connecticut Supreme Court (Pet. App. A1-A4) is reported at 243 Conn. 435, 703 A.2d 1144 (1997). The opinion of the Connecticut Superior Court (Pet. App. A5-A25) is reported at 45 Conn. Sup. 171 (1996).

Jurisdiction

The decision of the Connecticut Supreme Court was entered on December 30, 1997. The petition for a writ of certiorari was filed on March 30, 1998. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

Statement

The extensive history of this lawsuit is described in three decisions by the Connecticut Supreme Court, which has repeatedly considered petitioner's claim that her termination in 1974 violated her due process rights under the state and federal constitutions. *Lee v. Board of Education of the City of Bristol*, 181 Conn. 69, 434 A.2d 333 (1980) ("*Lee*") (Resp. App. at 1a-16a); *Halpern v. Board of Education of the City of Bristol*, 231 Conn. 308, 649 A.2d 534 (1994) ("*Halpern I*") (Resp. App. at 17a-24a); *Halpern v. Board of Education of the City of Bristol*, 243 Conn. 435, 703 A.2d 1144 (1997) ("*Halpern II*"). It is also described in a decision by the Connecticut Superior Court, *Halpern v. Board of Education of the City of Bristol*, 45 Conn. Sup. 171 (1996) (McWeeny, J.), whose analysis was adopted by the state Supreme Court in its third review of petitioner's claims.[1]

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[1] During the pendency of her second appeal, petitioner filed an action in state court against the Board for a writ of mandamus and declaratory relief. That lawsuit was dismissed on the basis of the prior pending action doctrine. *Halpern v. Board of Education of the City of Bristol*, 196 Conn. 647,

1. On August 30, 1974, the Bristol Board of Education (the "Board") voted to terminate the employment of petitioner Elinor Halpern (previously Elinor Lee), a tenured, first-grade teacher in the Bristol, Connecticut, school system. As described in the state Supreme Court's initial decision, the termination was based on evidence that petitioner was chronically late for work; missed work assignments on a regular basis; kept her pupils in at recess and after school contrary to her supervisors' instructions; left her classroom unattended to make personal calls; was warned against speeding in the school parking lot; and provoked a number of transfer requests from parents who were upset by her "unorthodox" teaching methods. *Lee*, 181 Conn. at 71 n.1; 434 A.2d at 335 n.1. In accordance with Connecticut General Statutes § 10-151(b), petitioner's termination was preceded by a hearing, at which she was represented by counsel and was accorded a full opportunity to produce evidence and cross-examine witnesses called by the Board. 181 Conn. at 70-71; 434 A.2d at 335. A transcript was made of this hearing. *Id.*

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495 A.2d 264 (1985). Most recently, petitioner filed an action against the Board in U.S. District Court on February 6, 1998, asserting that she is entitled to back pay and other monetary relief as a result of the Board's alleged violation of her due process and contractual rights. *Halpern v. Bristol Board of Education*, Civil Action No. 308CV00243 (D. Conn.)

The Connecticut Court of Common Pleas dismissed petitioner's appeal from the Board's decision. On review, the Connecticut Supreme Court concluded that Halpern "was afforded adequate notice of the charges made and that the hearing held pursuant to § 10-151(b) . . . complied with the constitutional safeguards." 181 Conn. at 76, 434 A.2d at 337. However, the court held that a tenured teacher discharged for cause under General Statutes § 10-151(b) was entitled, as a matter of due process, to "a written statement of the decision reached, the reasons for the determination, and a fair summary of the evidence relied upon." 181 Conn. at 79, 434 A.2d at 339. The court remanded the case to the Board for further proceedings consistent with its decision.

2. Upon remand, the Board convened in November, 1980, to consider the transcript and exhibits introduced at the 1974 termination hearing. *See Halpern I*, 231 Conn. 308, 310, 649 A.2d 534, 536 (1994). On the basis of that review, the Board issued "findings and conclusions" that reaffirmed its decision to terminate petitioner's employment. *Id.* Petitioner's appeal of that decision to the Connecticut Superior Court was rejected. But the Connecticut Supreme Court again reversed the trial court's decision and held that further procedures were required in order to comply with its previous mandate. 231 Conn. at 314, 649 A.2d at 537-38. The court directed the Board to adopt, by analogy, the procedures contained in the Uniform Administrative Procedure Act, Connecticut General Statutes § 4-179, by affording petitioner the opportunity to

comment on the Board's proposed determination and to present "briefs and oral argument" to the Board. *Id.*

3. As described in the most recent decision of the Connecticut Superior Court, the Board took a series of steps to comply with the remand. *See* 45 Conn. Sup. 171, 173-77 (1996) (Pet. App. A7-A11). These steps included the following:

a. In early January, 1995, the Board's attorney instructed current members of the Board to review the transcripts and exhibits from the 1974 termination hearing and notified petitioner's attorney of the procedures that the Board proposed to use in order to comply with the remand.

b. The Board held a special meeting on January 25, 1995, at which petitioner and her attorney were present, to consider the record relating to petitioner's termination. After discussing the issues raised by the termination, the members of the Board concluded that a valid basis existed for petitioner's discharge and agreed to prepare proposed findings and conclusions consistent with that determination. The Board also agreed to circulate the draft to petitioner and to offer her the opportunity to respond in writing and orally to the proposed findings and conclusions before reaching a final decision.

c. On February 24, 1995, a draft of the Board's proposed findings and conclusions was sent to petitioner's

attorney, who was invited to submit a written response.[2] At no time did petitioner avail herself of the opportunity to submit a brief or other written response to the Board's draft findings and conclusions.

d. Following an extension of time requested by petitioner, the nine members of the Board met in public session on May 8, 1995, to consider the proposed findings and conclusions and to give petitioner the opportunity to respond orally to them. The meeting was called to order at 7:15 p.m. At the outset of the meeting, petitioner's attorney objected to the absence of a stenographer or recording device. The Board's attorney disputed the statutory basis for such a procedure but advised petitioner that she was free to tape-record the meeting if she chose. Petitioner then proceeded to provide a detailed oral response to the Board's proposed findings and conclusions.

At 8:50 p.m., the meeting was recessed for 15 minutes. When the meeting resumed at 9:05 p.m., petitioner was advised that the meeting would end at 10 p.m. and that she should be prepared to complete her presentation at that time. The Board denied a request by petitioner's counsel to

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[2] Although copies of the proposed and final findings and conclusions are included in petitioner's Appendix at A29-A41, these documents contain numerous typographical errors that do not appear in the originals. A correct copy of the final findings and conclusions is included in respondent's Appendix at 25a-31a.

allow her to continue for as long as she chose, including at additional meetings on later dates. Petitioner continued her presentation until 10 p.m. The chairperson of the Board then asked if any member of the Board wished to comment about the proposed findings and conclusions or petitioner's presentation. No Board member asked to do so. The Board then voted unanimously to adopt the proposed findings and conclusions upholding petitioner's termination.

4. On her third appeal to the Connecticut Superior Court, petitioner argued that the procedures followed by the Board had violated her due process rights, her rights under Connecticut General Statutes § 10-151, and the mandate of the Connecticut Supreme Court. The Superior Court rejected these arguments, holding *inter alia* that the Board's findings supported the termination decision; that the findings provided adequate notice of the nature of the charges against Halpern; that petitioner did not have a statutory right to a transcript of the May 8 meeting and was not prejudiced by the lack thereof; that petitioner had been given an adequate opportunity to respond to the charges against her; and that there was no evidence of a disqualifying bias on the Board's part. *See* 45 Conn. Sup. 171, 180-91 (Pet. App. A14-A25). In a decision issued on December 30, 1997, the Connecticut Supreme Court affirmed the holding of the Superior Court and adopted the decision of that court "as a proper statement of the facts and the applicable law" regarding petitioner's claims. *Halpern II*, 243 Conn. 435, 438 (Pet. App. A4).

ARGUMENT

I. The Petition Involves Well-Established Principles of Law That Have Been Repeatedly Addressed By This Court.

In upholding the validity of the procedures followed by the Board, the courts below applied well-recognized legal principles established by this Court regarding the due process rights that accompany the loss of a constitutionally protected property interest, such as teacher tenure. The lower courts correctly identified the governing legal standards, and there is no conflict among the state courts or the federal circuit courts regarding the nature of these standards. Petitioner's arguments therefore present no question calling for this Court's attention.

In the course of this 24-year legal saga, the Connecticut Supreme Court has repeatedly and carefully considered the state and federal due process rights of a tenured teacher who is facing discharge. In doing so, the state court applied familiar guidelines provided by this Court. The Connecticut Supreme Court recognized in *Lee* that petitioner "had a 'legitimate claim of entitlement' to the continuance of her teaching contract that was protected by the state and federal constitutions." 181 Conn. at 72-73, 434 A.2d at 335-36, citing *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577-78 (1972); *Goldberg v. Kelly*, 397 U.S. 254, 261-62 (1970). It relied upon this Court's analysis in *Roth* and *Mathews v. Eldridge*, 424 U.S. 319, 334-35

(1976), to conclude that the loss of a tenured position was "substantial." 181 Conn. at 74, 434 A.2d at 336. Analogizing to the termination of a welfare recipient's benefits in *Goldberg v. Kelly* and the revocation of parole and probation considered in *Morrissey v. Brewer*, 408 U.S. 471 (1972), and *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), the Connecticut Supreme Court identified detailed procedures that the Board was required to follow in the context of petitioner's termination proceeding. 181 Conn. at 78-80, 434 A.2d at 338.

Not only did the Connecticut Supreme Court correctly identify the relevant legal standards, but it bent over backwards in its application of those standards to be solicitous of petitioner's interests. The court twice remanded her case to the Board with directions to supplement the procedures previously provided. In *Lee*, the court required the Board to provide petitioner with an explanation of the reasons for its decision and a summary of the evidence relied upon. In *Halpern I*, the court expanded upon these procedures by requiring the Board to allow petitioner the opportunity to comment on the Board's proposed decision and to present written and oral argument to the deciding officials. Accordingly, the state court has applied this Court's well-established principles in the due process area in a manner that was, if anything, more generous to petitioner than the Constitution requires.

II. The Lower Courts Correctly Applied The Governing Legal Standards.

None of the arguments raised by petitioner suggest that the decision of the Connecticut Supreme Court was incorrect, let alone deserving of this Court's review. Petitioner essentially contends that, on its third review of this case, the state court applied the governing legal standards in a manner that was unfair to her. Such an argument is insufficient to support review by this Court. It is also baseless. As described in the extensive decision of the Superior Court, none of petitioner's legal arguments has merit.

1. Petitioner's principal argument is that she was deprived of due process because the findings and conclusions of the Board were insufficiently specific to apprise her of the nature of the charges against her. Petition at 16-21. In light of this proceeding's extensive history, which includes an evidentiary hearing, this argument strains credulity. Furthermore, the proposed findings and conclusions that petitioner was sent prior to the May 8 public meeting (Pet. App. A29-A34) were highly detailed. As the Superior Court noted, "[t]he proposed findings and conclusion are five pages in length, contain thirteen specific findings and include a weighing and assessment of the evidence." 45 Conn. Sup. at 186. Petitioner had substantial advance notice of these findings. She and her attorney were present at the Board meeting in January, 1995, at which the evidence relating to

the proposed findings and conclusions was discussed; her attorney was also sent a copy of the proposed findings and conclusions more than two months before the public meeting on May 8, 1995. *Id.* at 173-75. Petitioner declined the Board's invitation to submit a written response, which would have enabled her to raise any objections she had to the specificity of the proposed findings and conclusions.

Petitioner contends that the proposed findings were inadequate because they did not identify the "dates or the specific nature of the teacher's acts." Petition at 19-20, quoting *Osborne v. Bullitt County Board of Education*, 415 S.W.2d 607, 609-10 (Ct. App. Ky. 1967) (internal quotations omitted). The "specific nature" of the improper actions was clearly described in the findings, however, which identify a series of inappropriate actions by petitioner, including repeated tardiness, missed assignments, and disregard of her supervisor's instructions. *See* Pet. App. at A30-A32. In addition, the exhibits to the termination hearing, which are referenced in the findings and were available to petitioner, provide "a detailed chronology" of the events identified in the findings. *See Halpern v. Board of Education*, 45 Conn. Sup. at 183.[3] Under these circumstances, the notice provided was

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[3] For example, Exhibit H describes specific events during "a major portion of the 1973-74 school year from September 10, 1973 through March 29, 1974." 45 Conn. Sup. at 183. This chronology identifies:

more than adequate to permit petitioner to respond to the charges against her.

2. Petitioner cannot establish that the failure to transcribe the May 8 meeting was unreasonable, let alone violated her constitutional rights. She does not dispute the holding of the lower court that she had no statutory right to a transcript. Her only argument in support of this contention is that the existence of a transcript would have facilitated judicial review. Petition at 21-22. Petitioner's comments constituted oral argument, however, not evidence that needed to be preserved for a reviewing court. Moreover, as the Superior Court held, she has not identified any prejudice that resulted from the lack of a transcript. 45 Conn. Sup. at 190. Extensive minutes of the May 8 meeting were prepared, which included plaintiff's objections and a detailed summary of her argument. Her counsel conceded at oral argument before the Superior Court that these minutes were accurate.

> twenty-three days when the plaintiff was late for work; three incidents when the plaintiff, during the course of the school day, left her students unsupervised; two occasions when the plaintiff failed to pick up her students from special classes; eight instances of the plaintiff either being late or absent from assigned supervisory duties; and five times when the plaintiff missed or was late for special classes.

Id.

Id.[4] The absence of a transcript therefore had no adverse effect on petitioner's appeal.

3. Petitioner was provided a fully adequate opportunity to participate in the 1995 proceedings, which more than satisfied her constitutional right to have "a voice" in the proceedings. *Halpern I*, 231 Conn. at 314, 649 A.2d at 538. Halpern received the Board's proposed findings and conclusions in late February and was allowed over two months to submit a written response. She chose not to do so. She also chose to make her oral presentation herself, rather than relying on experienced counsel. At the May 8 public meeting, petitioner was permitted to present her oral comments for over two hours. Contrary to her present argument, these comments were not abruptly terminated; after more than an hour of oral presentation, she was informed that she would be allowed an additional 45 minutes to conclude.

Petitioner offers no support for the proposition that she was entitled, as a matter of constitutional right, to an unlimited amount of time to present oral argument. As the trial court stated, "[d]ue process requires fair proceedings, not perfect or exhaustive proceedings. *State v. Daugaard*, 231 Conn. 195, 218, 647 A.2d 342 (1994), *cert. denied*, 513

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[4] Furthermore, if petitioner had truly felt that a transcript was required, she could have availed herself of the Board's offer to let her tape-record the proceeding. *See* 45 Conn. Sup. at 190.

U.S. 1099 (1995)." 45 Conn. Sup. at 187. That petitioner did not marshal her arguments as effectively as she may have wished during her lengthy presentation does not raise a question of constitutional importance.

4. Finally, there is no evidence that the Board's decision was tainted by bias. To the contrary, the record demonstrates that the Board complied with the remand by the Connecticut Supreme Court in a conscientious manner. The Board: (1) involved petitioner's counsel in planning the procedures that would effectuate the remand; (2) deliberated at length on the record at its January 25, 1995, meeting in order to prepare the proposed final decision; (3) afforded Halpern ample time to file a written brief; and (4) heard over two hours of oral argument from petitioner before rendering its decision.

Petitioner argues that the decision is suspect because the Board voted to uphold her termination without further discussion after she had completed her oral presentation. The record contains no evidence, however, that any Board member had a disqualifying interest in this matter. Further, the fact that the Board members did not have any additional comments or questions at the conclusion of the May 8 meeting is hardly surprising. Prior to that meeting, the Board members had individually reviewed the testimony and evidence from the 1974 termination hearing; they had also discussed this evidence in detail at the January 25, 1995, meeting. Their failure to conduct any further discussion at

the May 8 meeting reflects nothing more than their familiarity with issues that they had already exhaustively considered.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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April 29, 1998

No. 97-1621

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RESPONDENT'S APPENDIX

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ELINOR LEE *v.* BOARD OF EDUCATION OF THE CITY OF BRISTOL

COTTER, C. J., LOISELLE, BOGDANSKI, PETERS and HEALEY, Js.

The plaintiff tenured teacher appealed to the Court of Common Pleas from the decision of the defendant board of education of the city of Bristol to terminate, under its statutory (§ 10-151 [b]) authority to do so, her contract of employment for inefficiency and insubordination. From the judgment of the Court of Common Pleas dismissing her appeal, the plaintiff appealed to this court claiming that the Court of Common Pleas erred in concluding that she had not been deprived of due process by the board's failure either to state the reasons for its decision or to state the evidence on which it had relied in making that decision. *Held* that the plaintiff, as a tenured teacher dismissed for cause under § 10-151 (b), was, as a matter of due process, entitled to a written statement of the decision reached by the board of education and to a statement of the reasons for the board's determination together with a fair summary of the evidence on which the board had relied in reaching that determination.

Because the meeting at which the plaintiff was afforded a hearing on the question of her termination was attended by a quorum of the actual members of the board, although not by a quorum of the authorized board membership, there being at that time one vacancy on the board, that meeting was not, as she claimed, invalid.

The plaintiff further claimed that the "emergency" board of education meeting at which her contract was terminated was unlawful because the board failed to explain adequately the nature of the emergency. That claim was unavailing since the plaintiff did not demonstrate that her substantive rights had been prejudiced by the holding of the meeting.

Argued January 8—decision released June 3, 1980

Appeal from a decision of the defendant board terminating the plaintiff's contract of employment, brought to the Court of Common Pleas in Hartford County and tried to the court, *Satter, J.*; judgment dismissing the appeal, from which the plaintiff appealed to this court. *Error; further proceedings.*

Joseph Rubin, for the appellant (plaintiff).

Thomas N. Sullivan, with whom, on the brief, was *William R. Connon,* for the appellee (defendant).

Arthur H. Healey, J. This case concerns the termination of a tenured teacher's contract of employment for cause under General Statutes § 10-151 (b). The plaintiff, Elinor Lee, who had been employed by the defendant board of education of the city of Bristol (hereinafter the board) for over four years and, hence, had acquired tenure under General Statutes § 10-151 (b), was discharged by the board on August 30, 1974. The plaintiff appealed from that decision to the Court of Common Pleas, which dismissed the appeal. The appeal to this court followed.

The relevant facts are not in dispute: On April 1, 1974, the plaintiff was informed by the superintendent of schools that the termination of her teaching contract was being considered by the board for inefficiency and insubordination against reasonable rules of the board of education. On April 18, 1974, the plaintiff was notified of the specific charges made against her,[1] and, on August 21, 1974, pursuant to the plaintiff's request, a hearing was held at which the plaintiff was present and represented by counsel. At the hearing, the plaintiff was given full opportunity to cross-examine witnesses called by

[1] Those charges were: (1) She had been late for work almost every week and had failed to heed "instructions" from her superiors concerning this tardiness; (2) she had missed work assignments at least once a week; (3) she had kept pupils in at recess and after school contrary to "instructions" of her superiors; (4) she had left her classroom unattended to make personal phone calls; (5) she had been warned on March 26, 1974, concerning speeding in the school parking lot; and (6) she had caused a number of transfer requests from parents upset by her "unorthodox teaching method."

the board and to produce evidence. The hearing was held before three members of the board, which, at the time of the hearing, was then comprised of five members.[2] A transcript was made of the hearing, which was examined by the two members of the board who were not present at the hearing. The decision to terminate was made by four members of the board, two of whom had not been present at the hearing but had read the transcript.

On appeal, the plaintiff claims that the trial court erred in the following respects: (1) in concluding that the board's failure to state the reasons for its decision or the evidence upon which it relied did not deprive the plaintiff of due process of law; and (2) in concluding that the hearing was conducted during a valid meeting of the board. This last claim is two-pronged: the plaintiff argues that there was no quorum present at the meeting at which the hearing took place, and that the meeting was unlawful because, although it was an emergency meeting, no adequate explanation of the emergency was given.

I

The fourteenth amendment to the United States constitution prohibits any state[3] from depriving any person of "life, liberty, or property, without due process of law." Article one, section eight of our state constitution contains the same prohibition and

[2] The charter of the city of Bristol authorizes a board of education consisting of six members. At the time of the meetings involved in this case, there existed one vacancy on the board.

[3] There is no question but that the action of a local board of education constitutes "state action" for purposes of the federal constitution. See *Terry* v. *Adams*, 345 U.S. 461, 473, 73 S. Ct. 809, 97 L. Ed. 1152 (1953) (Frankfurter, J., concurring); *Murphy* v. *Berlin Board of Education*, 167 Conn. 368, 372, 355 A.2d 265 (1974); *West Hartford Education Assn., Inc.* v. *DeCourcey*, 162 Conn. 566, 573, 295 A.2d 526 (1972).

is given the same effect as the fourteenth amendment to the federal constitution. *Miller* v. *Heffernan,* 173 Conn. 506, 516, 378 A.2d 572 (1977), appeal dismissed, 434 U.S. 1057, 98 S. Ct. 1226, 55 L. Ed. 2d 758 (1978). Our analysis of the plaintiff's claim, therefore, encompasses both provisions.

The property interests protected by the due process clause are diverse and may take many forms. *Board of Regents of State Colleges* v. *Roth,* 408 U.S. 564, 576, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972). A teacher who is given by statute the right to continued employment except upon a showing of cause or the bona fide elimination of his position; see General Statutes § 10-151 (b); acquires a property right that is entitled to protection under the due process clause.[4] See *Slochower* v. *Board of Education,* 350 U.S. 551, 556, 76 S. Ct. 637, 100 L. Ed. 692 (1956); cf. *Connell* v. *Higgenbotham,* 403 U.S. 207, 208, 91 S. Ct. 1772, 29 L. Ed. 2d 418 (1971). Thus, the plaintiff had a "legitimate claim of entitlement" to the continuance of her teaching contract that was protected by the state and federal constitutions. See *Board of Regents of State Col-*

[4] Even a nontenured teacher may have a liberty interest consisting of his reputation or honor that entitles him to due process protection upon his threatened termination for cause. *Board of Regents of State Colleges* v. *Roth,* 408 U.S. 564, 573, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972). In *Bishop* v. *Wood,* 426 U.S. 341, 96 S. Ct. 2074, 48 L. Ed. 2d 684 (1976), which involved the discharge of a public employee, the Supreme Court found that, on the facts of that case, because no property interest in continued public employment was created by a state statute, none was recognized by the due process clause; and that, because there was no public disclosure of the reasons for the discharge, no liberty interest was affected. For a discussion of this case and its ramifications see Rabin, "Job Security and Due Process: Monitoring Administrative Discretion Through a Reasons Requirement," 44 Univ. Chi. L. Rev. 60; note, "Democratic Due Process: Administrative Procedure After *Bishop* v. *Wood,*" 1977 Duke L.J. 453.

leges v. *Roth,* supra, 577–78; *Goldberg* v. *Kelly,* 397 U.S. 254, 261–62, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970); cf. *Bishop* v. *Wood,* 426 U.S. 341, 347, 96 S. Ct. 2074, 48 L. Ed. 2d 684 (1976).

Once a property interest protected by the due process clause is found to exist, the inquiry is directed to the type of procedure mandated by the constitutional prohibitions. The procedure that is due in any given case depends upon the extent to which a person is "condemned to suffer grievous loss." *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123, 168, 71 S. Ct. 624, 95 L. Ed. 2d 817 (1951) (Frankfurter, J., concurring); see *Goldberg* v. *Kelly,* supra, 262–63. "'"Due process," unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.'" *Cafeteria Workers* v. *McElroy,* 367 U.S. 886, 895, 81 S. Ct. 1743, 6 L. Ed. 2d 1230 (1961). Instead, due process is a flexible principle that "calls for such procedural protections as the particular situation demands." *Morrissey* v. *Brewer,* 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972); see *Mitchell* v. *W. T. Grant Co.,* 416 U.S. 600, 610, 94 S. Ct. 1895, 40 L. Ed. 2d 406 (1974). The United States Supreme Court has stated with greater specificity the factors to be considered in deciding what process is due: "[O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative

burdens that the additional or substitute procedural requirement would entail." *Mathews* v. *Eldridge*, 424 U.S. 319, 334–35, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976); see Tribe, American Constitutional Law § 10-13. The loss with which the plaintiff is threatened is substantial. See *Delagorges* v. *Board of Education*, 176 Conn. 630, 636, 410 A.2d 461 (1979). Not only is her teaching position her livelihood and a vital source of income, the charges against her, which reflect upon her professional competence and character, implicate her interest in liberty protected by the due process clause of the fourteenth amendment. *Board of Regents of State Colleges* v. *Roth*, supra, 572–73. In view of the substantial interest at stake, we examine the procedures employed to determine whether they comport with the basic principles of due process embodied in our state and federal constitutions.

At the outset, we must determine what statutes were applicable to the plaintiff's termination in 1974. The Uniform Administrative Procedure Act (UAPA); General Statutes §§ 4-166 through 4-189; which was enacted in 1971 and became effective in January, 1972; Public Acts 1971, No. 854; contained a broad definition of "agency."[3] In *Murphy* v. *Berlin Board of Education*, 167 Conn. 368, 355 A.2d 265 (1974), this court considered the scope of the UAPA and concluded that local boards of education were included within the term "state board" used in General Statutes § 4-166 (1) as originally enacted. Id., 373. That determination was based upon "the absence of any indication to the contrary

[3] Public Acts 1971, No. 854 § 1 (1) provided: "'Agency' means each state board, commission, department or officer, other than the legislature or the courts, authorized by law to make rules or to determine contested cases."

in the statute itself, its legislative history, or our cases." Ibid. That the legislature intended the UAPA to establish a single uniform procedure for administrative agencies covered by the act is evidenced by the broad language of § 4-189 repealing "[a]ny provisions in the general statutes which are inconsistent with [the act]." In *McDermott* v. *Commissioner of Children & Youth Services*, 168 Conn. 435, 445, 363 A.2d 103 (1975), we held that § 4-189 repealed an inconsistent judicial review provision of the State Personnel Act. General Statutes §§ 5-193 through 5-269.

In 1975, after the decision in *Murphy*, however, the legislature amended General Statutes § 4-166 (1) by adding to those persons and bodies expressly excluded from the definition of "agency" any "town or regional board of education." See Public Acts 1975, No. 75-529 § 2. That this amendment reflects the legislature's intended scope of the original definition is apparent from the remarks of Representative James T. Healey, the bill's sponsor. Representative Healey remarked that the amendment was necessary because town and regional boards of education, although local bodies, "are regarded, for certain purposes, as being arms of the State government insofar as they are charged with duty concerning education." See 18 H. R. Proc., Pt. 13, 1975 Sess., p. 6322. "An amendment which in effect construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act." *Tax Commissioner* v. *Estate of Bissell*, 173 Conn. 232, 246, 377 A.2d 305 (1977); see Sutherland, Statutory Construction (4th Ed.) §§ 22.31, 22.35. We consider the 1975 amendment as construing and clarifying the original scope of § 4-166 (1) and, therefore, a legislative declaration

of the meaning of the original act. We reach this conclusion for several reasons: it was not readily apparent that local or regional boards of education would constitute state boards or agencies under the UAPA as originally enacted; subsections (b) and (f) of § 10-151, the Teacher Tenure Act, regulating procedures that are inconsistent with the UAPA were never repealed; and our decision in *Murphy* was based on the absence of any legislative history or expression to the contrary which, because of the 1975 amendment, is not now the case. Thus, we conclude that the Teacher Tenure Act, and not the UAPA, applies to this case.[6]

We now examine the applicable provisions of the Teacher Tenure Act to determine whether they comply with the modicum of due process required by our state and federal constitutions. The plaintiff does not challenge the sufficiency of the notice and hearing requirements of General Statutes § 10-151 (b). The record discloses that the plaintiff was afforded adequate notice of the charges made and that the hearing held pursuant to § 10-151 (b), at which the plaintiff was represented by counsel, presented evidence and cross-examined witnesses, complied with the constitutional safeguards.[7] Her single claim in this regard is that the board's failure to state the reasons for its decision and the evidence upon which it relied deprived her of due process of

[6] We reach this conclusion notwithstanding the language of *Adamchek* v. *Board of Education*, 174 Conn. 366, 369, 387 A.2d 556 (1978), because in *Adamchek* the legislative history of the 1975 amendment as well as the other factors we have alluded to above were not considered.

[7] We also note that teachers in this state have access to "supervisory records and reports of competence, personal character and efficiency" that are maintained in personnel files relating to their employment by the local or regional boards of education. General Statutes § 10-151a.

law. General Statutes § 10-151 does not specify the form or content of a termination decision of a board of education.[8] We must determine, therefore, to what extent the constitutional due process standard places a greater burden upon a board of education than that set out in § 10-151 (b).

In *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970), the United States Supreme Court identified several elements of due process that must be part of the procedure employed by the state prior to its decision to terminate a welfare recipient's benefits.[9] The court concluded that the recipient is entitled to the following procedure: (1) timely and adequate notice detailing the reasons for a proposed termination; *Goldberg* v. *Kelly*, supra, 267–68; (2) a hearing before an impartial decisionmaker; id., 271; (3) the opportunity to confront and cross-examine adverse witnesses and to present evidence and argument; id., 268–70; (4) the right to be represented by counsel; ibid.; (5) a determination by the decisionmaker that rests solely on the legal rules and evidence adduced at the hearing, which, in turn, requires the decisionmaker to

[8] Where the board itself does not hold the hearing on termination and a panel of three persons does, as provided by General Statutes § 10-151 (b), that panel must "submit in writing its findings and a recommendation to the board of education as to the disposition of the charges against the teacher, and shall send a copy of such findings and recommendation to the teacher." Although a three-member panel was not used here, it is clear from our holding today that unless the board expressly adopts the findings and reasons of the panel, the fact that the panel has made findings and a recommendation does not relieve the board of stating its reasons for acting as it did and the evidence upon which it relied.

[9] In reviewing these elements, it must be borne in mind that two hearings were anticipated under the facts presented in *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970). The first is a preliminary, pretermination hearing; the second is a more formal post termination hearing. Id., 266–67.

"state the reasons for his determination and indicate the evidence he relied on." Id., 271. The court went on to state that at this preliminary hearing there was no need for the decision to be a "full opinion or even formal findings of fact and conclusions of law." Ibid.

The United States Supreme Court has also recognized a parolee's interest in continued liberty as protected by the due process clause. See *Morrissey* v. *Brewer*, 408 U.S. 471, 481–82, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972). Thus, his parole may initially be revoked only upon a preliminary determination of probable cause, and finally revoked upon a later hearing at which the following minimum requirements of due process were satisfied: "(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole." Id., 489. In *Gagnon* v. *Scarpelli*, 411 U.S. 778, 782, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973), the Supreme Court held that the due process requirements established for parole revocation were also applicable to probation revocation proceedings.[10] Cf. *Greenholtz* v. *Inmates of*

[10] The court in *Gagnon* v. *Scarpelli*, 411 U.S. 778, 790, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973), added to the requirements set out in *Morrissey* v. *Brewer*, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972), the right to counsel under certain circumstances.

Nebraska, 442 U.S. 1, 15, 99 S. Ct. 2100, 60 L. Ed. 2d 668 (1979) (parole board need not specify the particular "evidence" upon which it relies in a determination not to grant parole). Even in prison disciplinary hearings, in which the prisoner is not afforded the right to confront and cross-examine the witnesses testifying against him, the due process clause requires the decisionmaker to prepare a written statement of the evidence relied on and the reasons for the action taken. *Wolff* v. *McDonnell,* 418 U.S. 539, 564–65, 567, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974).

Those decisions, and their underlying rationale, lead us to the conclusion that a tenured teacher discharged for cause under General Statutes § 10-151 (b) is entitled, as a matter of constitutional law, to a written statement of the decision reached, the reasons for the determination, and a fair summary of the evidence relied upon. Accord, *Staton* v. *Mayes,* 552 F.2d 908, 915–16 (10th Cir.), cert. denied, 434 U.S. 907, 98 S. Ct. 309, 54 L. Ed. 2d 195 (1977); *McGhee* v. *Draper,* 564 F.2d 902, 911 (10th Cir. 1977); cf. *Mauriello* v. *Board of Education,* 176 Conn. 466, 470–71, 408 A.2d 247 (1979) (decided on other than constitutional grounds); see *State ex rel. Harris* v. *Annuity & Pension Board,* 87 Wis. 2d 646, 675, 275 N.W.2d 668 (1979); Hahn, "Procedural Adequacy in Administrative Decisionmaking: A Unified Formulation," 30 Ad. L. Rev. 467, 517 (1978). This conclusion is based upon the factors identified in *Mathews* v. *Eldridge,* 424 U.S. 319, 334–35, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), and set out above. Not only does a threatened termina-

tion jeopardize a teacher's source of income, like the termination of welfare benefits in *Goldberg*,[11] it may implicate a teacher's professional standing and reputation for competence, efficiency, and integrity and, thus, an important liberty interest. *Board of Regents of State Colleges* v. *Roth*, 408 U.S. 564, 573, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972). Certainly, the charges made in this case would have such an effect. Moreover, when officials act to deprive a person of a significant property or liberty interest and the reasons therefor are not given, the potential for a determination based on an error of law, mistake, caprice, malice, or discrimination is increased. A requirement that the reasons for the action taken and a summary of the evidence relied upon appear with the decision rendered minimizes the potential for such improper action. Finally, although such a requirement imposes an additional duty upon boards of education, that duty is by no means excessive or unreasonable in view of the liberty or property interests involved. Having carefully considered the charges and all the evidence presented, which is the duty of the board making a termination decision under General Statutes § 10-151 (b), it is hardly an onerous burden to state the reasons for its decision and the evidence upon which it relied. The statement of reasons and a fair summary of the evidence relied upon need not reflect the polish of a judicial opinion. Reasoned and fair decisionmaking, not technical finesse, is guaranteed by the due process standard of the state and federal constitutions. Conclusory language, however, will not suffice. Accord, *Staton* v. *Mayes*, supra, 915–16.

[11] Unlike the deprivation in *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970), however, it is not always the case that a teacher derives his sole source of income from his employment.

Our conclusion is also based upon General Statutes § 10-151 (f), which grants a teacher aggrieved by the board's decision the right to judicial review in the Superior Court. On appeal, the court must determine whether the appropriate procedure under the statute and the state and federal constitutions was employed; cf. *Murphy* v. *Board of Education*, 167 Conn. 368, 374–76, 355 A.2d 265 (1974); and whether the evidence relied upon was reliable and substantial and, if believed, sufficient to establish cause under the statute. Cf. General Statutes § 4-183 (g); see *Obeda* v. *Board of Selectmen*, 180 Conn. 521, 523, 429 A.2d 956 (1980); *Tucker* v. *Board of Education*, 177 Conn. 572, 582, 418 A.2d 933 (1979); 63 Am. Jur. 2d, Public Officers and Employees § 202; annot., 4 A.L.R.3d 1090; note, "Teacher Tenure in Connecticut: Due Process Rights and 'Do Process' Responsibilities," 8 Conn. L. Rev. 690, 702 (1976). Effective judicial review of administrative decisions requires that such decisions be based upon substantial evidence and proper reasons. See *Baltimore & Ohio R. Co.* v. *Aberdeen & Rockfish R. Co.*, 393 U.S. 87, 92, 89 S. Ct. 280, 21 L. Ed. 2d 219 (1968); *USV Pharmaceutical Corporation* v. *Secretary of Health, Education & Welfare*, 466 F.2d 455, 461–62 (D.C. Cir. 1972); *In re Boston & Providence Railroad Corporation*, 428 F.2d 159, 164 (1st Cir. 1970); *Great Lakes Screw Corporation* v. *N.L.R.B.*, 409 F.2d 375, 379, (7th Cir. 1967); *Morris* v. *Gressette*, 425 F. Sup. 331, 340–41, affirmed, 432 U.S. 491, 97 S. Ct. 2411, 53 L. Ed. 2d 506 (1976); *Feinson* v. *Conservation Commission*, 180 Conn. 421, 428, 429 A.2d 910 (1980); *A.P. & W. Holding Corporation* v. *Planning & Zoning Board*, 167 Conn. 182, 186, 355 A.2d 91 (1974); *Board of Education* v. *Ingels*, 75

Ill. App. 3d 334, 337, 394 N.E.2d 69 (1979); Davis, Administrative Law Text (3d Ed.) § 16.03; see also Friendly, "Some Kind of Hearing," 123 U. Pa. L. Rev. 1267, 1292 (1975). A court reviewing an administrative determination cannot engage in surmise and conjecture to determine whether the decision was lawfully reached.[12] See *SEC* v. *Chenery Corporation*, 332 U.S. 194, 196–97, 67 S. Ct. 1575, 91 L. Ed. 1995 (1947); *Franklin* v. *Shields*, 569 F.2d 784, 797 (4th Cir. 1977). Thus, under the Model State Administrative Procedure Act, an agency is required to prepare "findings of fact and conclusions of law, separately stated." 13 Uniform Laws Annot., State Administrative Procedure § 12 (1980).[13] A similar requirement appears in the Federal Administrative Procedure Act; 5 U.S.C.

[12] In this case, for example, where two reasons establishing cause under General Statutes § 10-151 (b) were alleged but no statement of reasons was given by the board, it is impossible for a reviewing court to ascertain whether one or both grounds were found to exist. Moreover, absent a statement of reasons and a fair summary of the evidence relied upon, a reviewing court is unable to determine what evidence was relied upon to establish cause under the statute and, therefore, whether such evidence was sufficient; see *Tucker* v. *Board of Education*, 177 Conn. 572, 576, 582, 418 A.2d 933 (1979); and whether it was appropriate for the board to consider such evidence; see *McDermott* v. *Commissioner of Children & Youth Services*, 168 Conn. 435, 442–43, 363 A.2d 103 (1975); *Murphy* v. *Berlin Board of Education*, 167 Conn. 368, 375–76, 355 A.2d 265 (1974).

[13] It is interesting to note that although the Connecticut Uniform Administrative Procedure Act; General Statutes §§ 4-166 through 4-189; derives from the Model State Administrative Procedure Act, there is currently no provision in our act like § 12 of the model act. When originally enacted, § 4-180 of our UAPA contained a requirement that the agency set out its findings of fact and conclusions of law in its final decision. See General Statutes § 4-180 (Rev. to 1972). This language was deleted from the act in 1973. See Public Acts 1973, No. 73-620 § 17. Notwithstanding, other provisions of the act reinforce the conclusion that findings of fact and conclusions of law, separately stated, must be made. See General Statutes §§ 4-177 (g) and 4-183 (d).

§ 557 (c); and has been adopted with "remarkable uniformity" in nearly all state courts, irrespective of a statutory requirement. Davis, Administrative Law Text (3d Ed.) § 16.03; see also *State ex rel. Harris* v. *Annuity & Pension Board,* 87 Wis. 2d 646, 275 N.W.2d 668 (1979). Once the legislature has afforded a teacher dismissed for cause the right to judicial review of that determination, it is for the courts to ensure that that right is meaningfully protected.

II

The last claim raised by the plaintiff requires little discussion. The plaintiff's argument that the meeting of the board at which the hearing was conducted was illegal because a quorum was not present is without merit. The authorized membership of the Bristol board of education under the city charter was six. At the time of the plaintiff's termination of contract there was one vacancy of the board. The meeting at which the plaintiff was afforded a hearing, was held by three members of the board. The plaintiff argues that because the number of members present at that meeting was insufficient to constitute a quorum of the authorized membership of the board, the meeting was unlawful and the action taken pursuant thereto of no effect. The plaintiff did not object to the meeting on this basis at the time it was held. Moreover, she has presented this court with no Connecticut authority for the proposition that a quorum is determined from the number of authorized members of a public body rather than the number of actual members at the time action is taken. In the absence of a statute relating to this public body; cf. *Steiner, Inc.* v. *Town Plan & Zoning Commission,* 149 Conn. 74, 175 A.2d 559 (1961); we

see no reason why a meeting held by a quorum of the actual members of the board should be deemed invalid. See *State* v. *Orr,* 61 Ohio 384, 56 N.E. 14 (1899); 56 Am. Jur. 2d, Municipal Corporations § 169; 67A C.J.S., Parliamentary Law § 6 b; annot., 43 A.L.R.2d 698 § 7. Furthermore, the meeting of the board at which the plaintiff's contract actually was terminated was attended by a quorum of both the authorized and the actual number of board members.

The plaintiff's argument that the August 30, 1974 meeting at which her contract was terminated was unlawful because, although it was an emergency meeting, no adequate explanation of the emergency was given is also unavailing. Even were we to assume that the explanation given for the emergency meeting was inadequate,[14] the plaintiff has not demonstrated that holding the board meeting at that time affected her substantive rights. Nor did she make any objection to the procedure followed at that time. Absent a showing that any alleged irregularity in administrative proceedings was prejudicial to the substantive rights of the appellant, no corrective action is warranted by the courts. Cf. *Gelinas* v. *Nelson,* 165 Conn. 33, 40–41, 327 A.2d 565 (1973).

There is error, the judgment is set aside and the case is remanded with direction to return the case to the board for further proceedings consistent with this opinion.

In this opinion the other judges concurred.

[14] The meeting was held on August 30, 1974, to consider the termination of the plaintiff's teaching contract. It is readily apparent that the decision regarding the plaintiff's continued employment should have been made, if at all possible, prior to the commencement of the new school year.

ELINOR HALPERN *v.* BOARD OF EDUCATION OF THE CITY OF BRISTOL
(14975)

PETERS, C. J., and CALLAHAN, NORCOTT, KATZ and PALMER, Js.

The plaintiff tenured teacher, in 1974, had been discharged for cause by the defendant board of education of the city of Bristol pursuant to the Teacher Tenure Act (§ 10-151). On her appeal, *Lee* v. *Board of Education* (181 Conn. 69), this court determined that due process entitled her to a written statement of the decision, the reasons for the determina-

tion, and a fair summary of the evidence relied upon by the board. On remand from this court for further proceedings, a newly constituted board reconsidered her termination in 1980, and reaffirmed the earlier decision to discharge the plaintiff and issued findings and conclusions in support of its determination. The plaintiff then appealed that decision to the trial court, which rendered judgment in favor of the board, and the plaintiff further appealed claiming that the actions of the board in making its 1980 determination on the basis of the 1974 record, without conducting a new termination hearing, violated her statutory and constitutional rights, as well as the mandate of this court's remand order. *Held:*

1. The plaintiff could not prevail on her claim that she was statutorily entitled to a new termination hearing, this court having previously concluded that her statutory rights had not been violated; the mandate for further proceedings did not direct a new hearing under the statute.
2. This court having concluded in its earlier decision that the plaintiff had established a violation of her constitutional rights, the board and the trial court were required to construe this court's mandate for vindication of those rights in light of the actual circumstances at the time the remand was to be implemented in 1980 by the newly constituted board. Accordingly, because the plaintiff had been deprived of any meaningful ability to participate in the newly constituted board's remediation of her constitutional rights, the matter was again remanded to the board for futher proceedings to determine whether there are grounds for the plaintiff's termination and to specify the evidence supporting the board's determination; further, the board was directed to prepare a "proposed final decision" and to afford the plaintiff and other interested parties an opportunity to respond to that proposal, including the right to file exceptions and to present briefs and oral argument to the board.

Argued September 21—decision released November 8, 1994

Appeal from a decision by the defendant terminating the plaintiff's employment as a tenured teacher, brought to the Superior Court in the judicial district of Hartford-New Britain at Hartford and tried to the court, *Maloney, J.*; judgment for the defendant, from which the plaintiff appealed. *Reversed; further proceedings.*

Jon L. Schoenhorn, with whom, on the brief, was *Christine M. Fiedler,* for the appellant (plaintiff).

Thomas N. Sullivan, for the appellee (defendant).

William J. Dolan filed a brief for the Connecticut Education Association as amicus curiae.

PETERS, C. J. The dispositive issue in this administrative appeal is the scope of our mandate "for further proceedings consistent with [our] opinion" in *Lee* v. *Board of Education*, 181 Conn. 69, 84, 434 A.2d 333 (1980). Since 1974, the plaintiff, Elinor Halpern, formerly Elinor Lee, has challenged the termination of her contract as a tenured teacher by the defendant board of education of the city of Bristol (board).[1] In *Lee*, we held that the board had properly conducted a termination hearing in accordance with the statutory requirements of the Teacher Tenure Act; General Statutes § 10-151; but had violated the constitutional requirements of procedural due process by failing to provide the plaintiff with "a written statement of the decision reached, the reasons for the determination, and a fair summary of the evidence relied upon." Id., 79.

Pursuant to our remand, the board convened in November, 1980, to consider the transcript and the exhibits introduced at the 1974 termination hearing. On the basis of that documentary review, the board reaffirmed its decision to terminate the plaintiff's employment and issued findings and conclusions in support of its determination. The plaintiff appealed that decision to the trial court, which rendered a judgment in favor of the board. The plaintiff then appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to Practice Book § 4023 and General Statutes § 51-199 (c). We reverse the judgment of the trial court.

[1] The inordinate delays in the adjudication of this case reflect credit on no one. The record demonstrates that the board acted promptly in response to our remand. Thereafter, the plaintiff sought simultaneously to pursue an action for a declaratory judgment and a writ of mandamus as an alternative to her administrative appeal. That alternative remedy was not conclusively determined to be unavailable to the plaintiff until this court's decision in *Halpern* v. *Board of Education*, 196 Conn. 647, 495 A.2d 264 (1985). Review of the plaintiff's administrative appeal was then apparently delayed by an inability to locate the administrative record for a significant period of time.

The gravamen of the plaintiff's present appeal is that the members of the board that reconsidered her termination in 1980, could not validly conduct the "further proceedings" ordered by this court because none of them had been a member of the board at the time of the original termination proceedings in 1974. The plaintiff maintains that the actions of the newly constituted board in making its determination on the prior record, without conducting an entirely new hearing, violated: (1) her statutory rights; (2) her constitutional rights; and (3) the mandate of our remand order.[2] Although we disagree that a new hearing is required, we agree that the special circumstances of this case warrant a more expansive interpretation of our mandate than it received from the board or from the trial court.

Well established principles govern further proceedings after a remand by this court. "In carrying out a mandate of this court, the trial court is limited to the specific direction of the mandate as interpreted *in light of the opinion*. . . . This is the guiding principle that the trial court must observe. . . . Compliance means that the direction is not deviated from. The trial court cannot adjudicate rights and duties not within the scope of the remand. . . . It is the duty of the trial court on remand to comply strictly with the mandate of the appellate court according to its true intent and meaning. No judgment other than that directed or permitted by the reviewing court may be rendered, even though it may be one that the appellate court might have directed. The trial court should examine the mandate and *the opinion of the reviewing court and proceed in conformity with the views expressed therein*. . . ." (Citations omitted; emphasis in original;

[2] The plaintiff has not challenged the conclusion of the trial court that the evidence adduced at her termination hearing was sufficient to support the findings of the board.

internal quotation marks omitted.) *West Haven Sound Development Corp.* v. *West Haven*, 207 Conn. 308, 312, 541 A.2d 858 (1988); *Wendland* v. *Ridgefield Construction Services, Inc.*, 190 Conn. 791, 794–95, 462 A.2d 1043 (1983); *State* v. *Avcollie*, 188 Conn. 626, 643, 453 A.2d 418 (1982), cert. denied, 461 U.S. 928, 103 S. Ct. 2088, 77 L. Ed. 2d 299 (1983); *Nowell* v. *Nowell*, 163 Conn. 116, 121, 302 A.2d 260 (1972).

Applying these principles to the circumstances of this case, we are persuaded that the plaintiff cannot prevail on her claim that she is entitled, as a matter of statutory right, to a new termination hearing. In our prior decision, we concluded that the plaintiff's statutory rights had not been violated. *Lee* v. *Board of Education*, supra, 181 Conn. 76–77. Accordingly, our mandate for further proceedings did not direct a new hearing under the statute. Indeed, a contrary mandate would have required reconciliation with our holding in *Gervasi* v. *Town Plan & Zoning Commission*, 184 Conn. 450, 452–53, 440 A.2d 163 (1981), that we do not have unlimited authority to order new administrative hearings.

The terms of our mandate necessarily reflected, however, our conclusion that the plaintiff had established a violation of her constitutional rights by reason of the board's failure to adopt a statement of the grounds for her termination and the evidence supporting that termination. The conclusion that the board's 1974 actions had infringed the plaintiff's constitutional rights cannot now be relitigated. The only question that remains is what procedural vehicle we contemplated by our mandate for further proceedings to vindicate those rights. As far as the present record shows, although our judgment was rendered six years subsequent to the plaintiff's termination hearing, the parties never sought clarification of the terms of our mandate. The board and the trial court were required, therefore, to construe

our mandate for vindication of the plaintiff's constitutional rights in light of the actual circumstances at the time the remand was to be implemented. "We have rejected efforts to construe our remand orders so narrowly as to prohibit a trial court from considering matters relevant to the issues upon which further proceedings are ordered that may not have been envisioned at the time of the remand. *Blaker* v. *Planning & Zoning Commission,* 219 Conn. 139, 592 A.2d 155 (1991). So long as these matters are not extraneous to the issues and purposes of the remand, they may be brought into the remand hearing." *Cioffoletti* v. *Planning & Zoning Commission,* 220 Conn. 362, 369, 599 A.2d 9 (1991).

The relevant circumstances in this case necessarily include the fact that, in 1980, the members of the board who were charged with implementing our remand order included no one who had participated in the 1974 hearings concerning the plaintiff's termination. We are confident that the board members attempted to discharge their responsibilities in a conscientious manner and that they read with care the documentation that was available to them. Nonetheless, we are persuaded that the procedure employed by the board deprived the plaintiff of any meaningful ability to participate in the board's remediation of her constitutional rights.[3] That was not the intent of our mandate. Further proceedings are therefore required.

[3] Because our focus is on a remand subsequent to a determination that the plaintiff's constitutional rights had been violated, we need not decide whether, as the board suggests, contested administrative cases constitutionally can be adjudicated, ab initio, by agency members who have not had the opportunity personally to observe the witnesses, in the absence of procedures equivalent to those mandated in this opinion. Therefore, we do not decide what precedential value to assign the cases from other jurisdictions cited by the board. See, e.g., *Utica Mutual Ins. Co.* v. *Vincent,* 375 F.2d 129, 131–34 (2d Cir. 1967); *Lewandoski* v. *Vermont State Colleges,* 142 Vt. 446, 451–53, 457 A.2d 1384 (1983).

To eliminate any ambiguity in our present order of remand, we direct the trial court to set aside its judgment and to remand the case to the board to determine whether there are grounds for the plaintiff's termination and to specify the evidence that supports its determination. In order to provide the plaintiff with a voice in these proceedings, we direct the board to adopt, by analogy, the procedure specified by the Uniform Administrative Procedure Act in General Statutes § 4-179.[4] That section requires, in somewhat comparable circumstances, the preparation of a "proposed final decision," and affords to interested parties the opportunity to comment on that proposal by filing exceptions and presenting briefs and oral argument to the officials who are to render the decision. We have held that the opportunity to respond to a "proposed final decision" is a constitutionally adequate safeguard of the due process rights of the parties whose interests are being adjudicated in a contested case. *Pet* v. *Dept. of*

[4] General Statutes § 4-179 provides: "AGENCY PROCEEDINGS. PROPOSED FINAL DECISION. (a) When, in an agency proceeding, a majority of the members of the agency who are to render the final decision have not heard the matter or read the record, the decision, if adverse to a party, shall not be rendered until a proposed final decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the members of the agency who are to render the final decision.

"(b) A proposed final decision made under this section shall be in writing and contain a statement of the reasons for the decision and a finding of facts and conclusion of law on each issue of fact or law necessary to the decision.

"(c) Except when authorized by law to render a final decision for an agency, a hearing officer shall, after hearing a matter, make a proposed final decision.

"(d) The parties and the agency conducting the proceeding, by written stipulation, may waive compliance with this section."

We direct the board to adopt this procedure in the special circumstances of this case by analogy only, as we recognize that the Uniform Administrative Procedure Act defines the term "agency" to exclude "town or regional boards of education." General Statutes § 4-166 (1); see *Neyland* v. *Board of Education*, 195 Conn. 174, 177–78 and n.5, 487 A.2d 181 (1985).

Health Services, 228 Conn. 651, 672, 638 A.2d 6 (1994). The board is therefore directed in this case to prepare such a "proposed final decision," and thereafter to afford the plaintiff and other interested parties the opportunity for appropriate responses thereto, including the right to file exceptions and to present briefs and oral argument to the board. After due consideration of these responses, the board is then authorized to adopt a final decision including the requisite findings concerning the propriety of the termination of the plaintiff's tenure as a teacher in 1974.

The judgment of the trial court is reversed and the case is remanded to that court with direction to remand the case to the board for further proceedings in accordance with the mandate contained in the immediately preceding paragraph.

In this opinion the other justices concurred.

BRISTOL BOARD OF EDUCATION

In the Matter of the Termination of Employment of
Elinor Lee Halpern

FINDINGS AND CONCLUSIONS

This matter comes before the Board for the third time in more than twenty years, as a result of a decision by the Connecticut Supreme Court in the fall of 1994. While the history of this case is spelled out in some detail in that decision, the following brief summary may be helpful.

On August 30, 1974, the Board (as it was then constituted) held a hearing on a recommendation of the administration that the contract of employment of Elinor Lee (now Halpern) be terminated. Following a full hearing where each party had the opportunity to present witnesses and exhibits, the Board voted in favor of termination. Following judicial appeals, the case was remanded to the Board in 1990, with direction to issue a written decision including findings of fact and conclusions of law. On November 12, 1980 the Board (as then constituted) issued such a decision, affirming Ms. Halpern's termination of employment.

Following another series of judicial appeals, the case was once again remanded to the Board, with direction to permit Ms. Halpern input into the decision-making process, by issuing proposed findings and conclusions and offering Ms. Halpern an opportunity to submit oral and written argument before a final decision is adopted.

Pursuant to this directive, the members of the Board

as presently constituted reviewed the 1973 hearing transcript and exhibits, and met on January 25, 1995 in open session to discuss their views. The Chairman of the Board, in consultation with the Board's counsel, prepared proposed findings and conclusions, reflecting the views expressed by the members of the Board at the January 25 meeting. The proposed findings and conclusions were disseminated to the members of the Board and to Ms. Halpern simultaneously, under cover letter dated February 24, 1995.

By that letter, Ms. Halpern was provided an opportunity to submit written argument regarding the proposed findings and conclusions, but no such material was submitted. Ms. Halpern was also offered the opportunity to present oral argument at a meeting of the Board called for such purpose. Originally scheduled for March 28, 1995, this meeting was postponed at Ms. Halpern's request for several weeks, and was eventually held on May 8, 1995.

Following approximately three hours of oral argument by Ms. Halpern and her attorney, the Board voted unanimously to adopt the proposed findings and conclusions as the Board's final decision. Those findings and conclusions are as follows:

Findings of Fact

1. In the 1973-74 school year, Elinor Lee was employed as a teacher in the Bristol Public Schools, and was assigned to a first grade class at Greene-Hills School.

2. Based primarily on concerns about her performance during the 1973-74 school year expressed by her principal, Gerald T. Kerr, and by the Assistant

Superintendent for Personnel, Constant W. Blum, Ms. Lee was notified by the Superintendent of Schools, Dr. William F. Rowe, that termination of her contract was under consideration by the Board of Education.

3. At the hearing before the Board of Education on August 21, 1974, both Ms. Lee and the administration (designated in the transcript as the "City") were represented by counsel; both presented witnesses who testified under oath and were subject to cross-examination; and both presented documentary evidence (Teacher Exhibits 1-4 and City Exhibits A-H).

4. The administration's reasons for recommending termination were grouped under two general categories: "Inefficiency - Breach of Contract Concerning the Absenteeism and Tardiness of Subject," and "Insubordination and Unacceptable Teaching Patterns." Numerous examples under each category were detailed in City Exhibit H. In Teacher Exhibit 1, some of these examples were admitted and some were denied, but in most cases Ms. Lee's response consisted of an excuse or explanation for her behavior.

5. On August 20, 1973, Mr. Kerr directed Ms. Lee in writing not to require or permit children to remain after school, "with or without parental permission"; not to require or permit children "to stay in during recess or noon hour to complete homework"; and not to hold children responsible for completing work taken home (City Exhibit A).

6. On October 23, 1973, Mr. Blum directed Ms. Lee to be on duty "no later than 8:40 a.m. on each school day"; to dismiss all of her class promptly at 3:00 p.m. each day so they "leave school a few minutes

thereafter" and to get specific permission from Mr. Kerr for any exceptions; to assign no homework "for which a required return is mandated"; and "never to leave your class unattended" (City Exhibit D).

7. On December 6, 1973, Dr. Rowe reaffirmed these directives in writing (City Exhibit E).

8. On numerous occasions during the 1973-74 school year, including several occasions after receipt of the directives referenced in paragraphs 6 and 7 above, Ms. Lee did not report for duty by 8:40 a.m. as required.

9. On numerous occasions during the 1973-74 school year, Ms. Lee was tardy or absent from her assigned duty.

10. On numerous occasions during the 1973-74 school year, Ms. Lee failed to send or bring her students to special classes when scheduled.

11. With respect to many of the occasions referenced in paragraphs 8 through 10 above, Ms. Lee offered no satisfactory excuse or reasonable explanation. With respect to those instances where Mr. Kerr's assertions were contradicted by Ms. Lee, the former generally carry more weight than the latter because they are supported by Mr. Kerr's contemporaneous notations.

12. On numerous occasions during the 1973-74 school year, including several occasions after receipt of the directives referenced in paragraphs 6 and 7 above, Ms. Lee required or permitted her first grade students to remain in the classroom during recess period to complete assigned work, or to remain in the classroom long after 3:00 p.m. without permission from Mr. Kerr.

13. There is evidence that on various occasions during the 1973-74 school year, including some occasions after receipt of the directives referenced in paragraphs 6 and 7 above, Ms. Lee assigned work which children were required to complete at home. Although this evidence is largely second-hand (parental reports, etc.) it is not specifically denied by Ms. Lee.

Conclusions:

The Board recognizes that in most employment relationships there are both positive and negative aspects, and this case presents no exception to the rule. The evidence indicates Ms. Lee was a dedicated and hard-working teacher. Some of the parents who testified in her behalf were very complimentary. Apparently there were some children who responded positively to her particular teaching style.

It is also entirely possible that some of Ms. Lee's difficulties with the administration resulted not from incompetence or negligence, but rather from a difference in philosophy or approach. The picture that emerges from the record is one of a teacher who "marches to her own drummer." In certain other settings, these qualities might not be disadvantageous, in fact quite the contrary. However, in the context of a first grade teaching position in the Bristol Public Schools, Ms. Lee's positive qualities were outweighed by her negative ones.

The fact that she was repeatedly late for school, usually with no advance notice, created both educational and safety problems for the administration. When she failed to get children to special classes on time (or at all), she not only deprived them of educational opportunities, but disrupted the schedules of other professionals in the

school. When she missed scheduled supervisory duties, she again put children at risk.

Her excuses for these repeated failures were simply inadequate. "My alarm clock didn't work," or "the clock in my classroom is incorrect," or "I couldn't find my car keys" are explanations one might expect from a teenager, not a responsible adult professional -- at least not on multiple occasions. In her position, it was reasonable for the administration to expect her to be where she was supposed to be, and on time. While everyone makes mistakes occasionally, hers were beyond all reasonable proportions.

With respect to keeping first-graders after school, or assigning them homework, the issue is not one of inefficiency or incompetence, but rather insubordination. However valid Ms. Lee may have felt her approach to be, she had been instructed in writing not to engage in these practices. Although there are indications in the record that she made some attempts to address concerns expressed by the administration, the bottom line is that she never fully complied with their directives.

When one accepts a job, one must also accept the policies and procedures adopted by management. The principal is responsible for running the school, and when Mr. Kerr instructed her to avoid certain methods of instruction, Ms. Lee was obligated to comply. The fact that some parents praised her methods is beside the point, especially since other parents asked to have their children removed from her class.

There can be no doubt that Ms. Lee was provided with ample notice of what was expected of her. Not only was she given crystal clear instructions by her principal

before the start of the 1973-74 school year, they were reinforced by written directives from the Assistant Superintendent and Superintendent a few months later. It appears from the record that Ms. Lee's problems persisted even after she was notified that termination of her contract was under consideration.

The Board concludes that Ms. Lee's chronic failure to report to work on time, as well as her repeated failure to perform supervisory duties as scheduled or get students to special classes as scheduled, continued with such frequency and over such a period of time as to constitute inefficiency or incompetence. The Board also concludes that Ms. Lee's failure to stop assigning homework to her first grade students, and especially her failure to heed administrative directives to dismiss children at 3:00 p.m., were sufficiently significant and serious to constitute insubordination.

Again, the Board recognizes Ms. Lee's many positive attributes, the support she enjoyed from several parents, and the efforts she apparently made to address some of the administration's concerns. However, on balance it is the Board's unanimous conclusion that there was due and sufficient cause for the termination of Ms. Lee's contract of employment.

Dated this 22nd day of May, 1995

Bristol Board of Education

By [Signed]

Richard M. Croce
Chairman